IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-584

MARY HELEN SEARS,
Petitioner,

v.

C. MARSHALL DANN, Commissioner of Patents,
Respondent.

PETITIONER'S EMERGENCY MOTION FOR IMMEDIATE DISPOSITION OF PENDING PETITION FOR WRIT OF CERTIORARI

Petitioner hereby moves the Court to take emergency action to dispose of the pending petition for writ of certiorari in this case no later than February 17, 1975, the next date on which the Court is scheduled to sit in regular session.

Grounds for this motion are that:

(1) The petition in this case raises an identical question 1 to the single question in No. 74-450 on which certiorari was granted December 16, 1974 and which will, petitioner understands, be heard this term in accordance with the Court's usual practice.

(2) This Court cannot adequately and fairly decide the common question on the basis of the facts and record in No. 74-450. Important considerations germane to the disposition of the common question which will *not*, and can*not*, be adequately presented in No. 74-450 alone include:

(a) The important patent policy questions 2, 3 and 4 in this case (Pet. 3-4), of which at least question 4 has fundamental constitutional importance, are subsumed in question 1 of the petition in *this* case, but will not be briefed in No. 74-450 where the subsumed subject matter relates solely to federal aviation law and policy;

(b) No. 74-450 will not adequately present both sides of the essential issue of whether the 5 U.S.C. 552(b)(3) provision for nondisclosure by the government of "matters specifically exempted from disclosure by statute", interpretation of which is the focus of the common question presented by the two petitions, is to be read in context with the intent and purpose of each individual statute of the "100", more or less, contended by the government to thus "specifically" exempt, rather than as a categorical generalization promulgated in furtherance of fostering overall governmental secrecy. In particular, the government has indicated its intention in No. 74-450, where it is the petitioner, to argue *only* the generalization "that Congress intended by exemption 3 to preserve all nondisclosure statutes, regardless of their terms, which specifically provide for nondisclosure" (R. Br. 3) without treating individual policy objectives of the statutes.

The "nondisclosure" statute involved in No. 74-450, Section 1104 of the Federal Aviation Act, does not afford the respondent in that case a sufficient scope of constitutional, historical, legislative or precedent background on which to brief or argue even a sampling of the many individual federal policies

that conflict with or militate against the sweep of the government's position. The statute involved in *this* case, 35 U.S.C. 122, while by no means exhaustive of the pertinent ramifications of all 100 alleged exemption statutes, *aoes* have a complex constitutional, historical and precedent background and hence serves to illustrate some of the real pitfalls in the government's simplistic approach.

(c) The underlying statute involved in No. 74-450, Section 1104 of the Federal Aviation Act, relates to withholding of information collected by the government for its own purposes and is for that reason quite different from the underlying statute in this case, 35 U.S.C. 122, which relates to withholding of information freely submitted to the government in an effort to induce the grant of a franchise enforceable against the public. Whether information induced for a governmental purpose is to be treated in the same manner under exemption 3 as information freely given to obtain a special benefit is another point not subsumed in No. 74-450 which will not be treated there, but which the Court should examine to answer fully the question common to the two petitions.

(3) Petitioner stands ready and willing, if certiorari is granted on February 17, 1975, to accept an expedited briefing schedule and to file its brief no later than March 10, 1975. Even if respondent should then insist upon a 30-day briefing period, its brief would accordingly be due by April 10, 1975. There is no reason why oral hearing of 74-450 and 74-584 could not then proceed in tandem in April 1975 before the Court's summer recess.

Petitioner further suggests that if this motion is granted, the government be directed to file its brief by March 30, 1975 to expedite such an oral hearing.

Respectfully submitted,

EDWARD S. IRONS
1801 K Street, N.W.
Washington, D.C. 20006

Attorney for Petitioner

January 29, 1975